IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

In re the Application	
Inventer	: Eric W. J. Moors
Application No.	: 10/537,450
Filed	: June 3, 2005
ATTY DOCKET NO.	: US020638

For: VIDEO RECORDER CONTROL USING STREAMED DATA PACKETS

APPEAL BRIEF

On Appeal from Group Art Unit 2623

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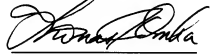
Registration No. 42,079



Date: May 23, 2010

By: Thomas J. Onka
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I. REAL PARTY IN INTEREST

Koninklijke Philips Electronics N.V. is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

As filed, this case included claims 1-25. Claims 1, 5-12 and 16-25 remain pending, stand rejected, and form the basis of this appeal. Claims 2-4 and 13-15 have been cancelled without prejudice.

IV. STATUS OF AMENDMENTS

This appeal is in response to an Advisory Action, dated March 9, 2010 to a Final Office Action, dated December 31, 2009, in response to an RCE filed on December 1, 2009, in response to a Final Office Action, dated July 1, 2009 and a non-Final Office Action, dated January 22, 2009. Claims 1, 5-12 and 16-25 stand rejected under 35 USC 103(a) as being unpatentable over Ohno (U.S.P. No. 7,142,777) in view of Gorbatov et al. (U.S. P. No. 6,792,617. On February 24, 2010, an amendment in response to the Final Office Action dated December 31, 2009, was not entered by the Examiner, maintaining the original rejections to the claims. A Notice of Appeal was filed on March 30, 2010.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 discloses an apparatus for recording a selected program, comprising a means for selecting the selected program, a means for receiving a data stream, one start data packet, and one end data packet for the entire selected program, a means for detecting the start data packet for the selected program and the end data packet for the selected program, and a means for recording the selected program, the recording being initiated in response to the detection of the start data packet for the selected program and terminated in response to the detection of the end data packet for the selected program, see page 3, lines 17-30, wherein the data stream includes one or more programs and a private stream, see page 5, lines 4-6, each program being represented by content data packets in the data stream, the private stream including the start data packet and the end data packet for the selected program and a start data packet and an end data packet for each additional program and the start data packet precedes the associated content data packets in the data stream for each program and the end data packet follows the associated content data packets in the data stream for each program and the end data packet of a preceding program and the start data packet for a following program are combined in a common data packet see page 7, lines 5-30. See also FIGs 1 & 2.

The present invention, particularly, independent claim 12 discloses a method for recording a selected programming with a video recorder comprising receiving a data stream associated with the selected programming, receiving and detecting one start data packet for the entire selected programming, starting the recording with the video recorder in response to the detection of the start data packet, receiving and recording the selected programming, receiving and detecting one end data packet for the selected programming, stopping the recording of the selected programming in response to the detecting of the end data packet, see page 3, lines 17-30, and combining one or more programs and a private stream to produce the data stream, each program being represented by content data packets in the data stream, see page 5, lines 4-6, the private stream including a start data packet and an end data packet for each program; and providing the data stream to a consumer environment having the video recorder, wherein the start data packet precedes the associated content data packets in the data stream for each program and the end data packet follows the associated content data packets in the data stream for each program and each end data packet and the start data packet for a succeeding program are combined in a common data packet see page 7, lines 5-30. See also FIGs 1 & 2.

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Independent claim 23 discloses a method for recording selected programming comprising, combining one or more programs to produce a data stream, the

one or more programs including the selected programming, each program being represented by content data packets in the data stream, see page 3, lines 17-30, combining one start data packet and one end data packet for each entire program to produce a private stream, see page 5, lines 4-6, and providing the data stream and the private stream to a consumer environment having a video recorder, wherein the data stream is associated with a first channel, see page 3, lines 17-30, the start data packet and the end data packet are for a private stream and a second channel, and the start data packet and end data packet include information that identifies the selected program and the channel associated with the selected program, see page 7, lines 5-30.

Claims 5-11 depend from independent claim 1 and recite further aspects of the invention claimed.

Claims 16-22 depend from independent claim 12 and recite further aspects of the invention claimed.

Claims 24-25 depend from independent claim 23 and recite further aspects of the invention claimed.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issue in the present mater is whether:

(1) Rejection of: Claims 1, 5-12 and 16-25 under 35 USC 103(a) as being unpatentable over Ohno (U.S.P. No. 7,142,777) in view of Gorbatov et al. (U.S. P. No. 6,792,617 is in error.

VII. ARGUMENT

(1) Rejection of claims 1, 5-12 and 16-25

Appellants respectfully submit that the rejection of Claims 1, 5-12 and 16-25 under 35 USC 103(a) as being unpatentable over Ohno (U.S.P. No. 7,142,777) in view of Gorbatov et al. (U.S. P. No. 6,792,617 is in error.

It is respectfully submitted that in order to establish a *prima facie* case of obviousness, three basic criteria must be met;

1. there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one

of ordinary skill in the art, to modify the reference or combine the reference teachings;

2. there must be a reasonable expectation of success; and

3. the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)

In KSR Int'l. Co. v. Teleflex, Inc., the Supreme Court noted that the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and that it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed:

"Often, it will be necessary ... to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an **apparent reason** to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis **should be made explicit**." KSR, 82 USPQ2d 1385 at 1396 (emphasis added).

Further, MPEP 2143 states:

"If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification."

Claim 1 recites the limitations of "and the end data packet of a preceding program and the start data packet for a following program are combined in a common data packet." Appellant respectfully submits that Ohno and Gorbatov, alone or in combination fails to show these limitations. Independent claims 12 and 23 recite similar limitations.

As indicated in the Final Office Action, Ohno fails to teach the above limitation. The addition of Gorbatov fails to cure the limitations of Ohno.

The Final Office Action indicates that Gorbatov teaches these limitations in col. 5, lines 46-48; col. 8, lines 10-27 and col. 7, line 50 – col. 8, line 5. Appellants respectfully disagree. The Final Office seems to equate ATVEF triggers to the end and start packets identifying the ending of one program and the starting of another program. However, the ATVEF trigger is part of the enhanced TV resources used to update information displayed on a visual display, provide other information such as URLs, metadata, scripts, java applets, HTML, web pages, images, or other useful data, see col. 3, lines 12-25. Moreover, these ATVEF triggers or event notifications are events registered by a viewer, see col. 5, lines 9-10, so that the additional information regarding a program is provided, see col. 3, lines 18-19. Thus they are not *the actual end and start packets* identifying the ending *of one program and the starting of another program.* And although, the event notifications can be used by a set top box to cause a recorder to tune to a channel and

start/end recording of a program, the set top box/recorder would still need to detect the actual start and end packets for the program from the broadcaster.

The Final Office Action refers to col. 8, lines 10-27 to show the limitation of "and the end data packet of a preceding program and the start data packet for a following program are combined in a common data packet." This section shows an example of an event notification and although the terms "start" and "end" are used nothing there fully explains what is being started or ended (i.e. what enhanced TV resources are being provided for the respective programs). However, it seems that what is being provided is additional information regarding two current programs (a news tornado alert on channel 8 and the score of the Monday Night Football game), and not the end data packet of a preceding program and the start data packet for a following program combined in a common data packet, as claimed.

Further even if Ohno and Gorbatov could be combined, it would still not teach the present invention. The combination would only teach an apparatus for receiving a data train multiplexing a plurality of programs each constituted of a plurality of transmission packets and recording the received data train in a storage medium with event notification to alert viewers of events of interest. Thus, the set top box must decode both the received actual start and end packets for the TV content from the broadcaster of the TV content

and the event notifications to provide the enhanced services, see FIG. 2 and col. 8, lines 59-63.

In accordance with the present claims, "the end data packet of a preceding program and the start data packet associated with a following program are combined in a common data packet" as recited in claim 1. The method of the present system provides a substantial advantage over the prior art in that packet overhead in content transmission is substantially reduced (e.g., see, present application, page 7, lines 16-18). The technical effect of the present combination of end/start data packets is to greatly reduce the overhead associated with indicating the beginning and end of content portions (a two for one reduction) without any drawback or loss of efficiency in the system.

Further, as the correctly noted in the Advisory Action in col. 8, lines 46-50 of Gorbatov teaches "that there may be zero triggers." However, the Final Office Action as noted above, seems to equate ATVEF triggers to the end and start packets identifying the ending of one program and the starting of another program. Therefore, if no triggers are present how then can Gorbatov teach the claimed limitation of "and the end data packet of a preceding program and the start data packet for a following program are combined in a common data packet..." The end data packet and the start data packet MUST always be detected. In this manner Gorbatov teaches away from the present invention because the ATVEF triggers are not "the end data packet" or "the start data packet," but only used

to provide the additional information regarding a program, see col. 5, lines 9-10. Thus, Gorbatov does not teach "the end data packet of a preceding program and the start data packet for a following program are combined in a common data packet...."

Each of the other claims in this application are dependent from one of the independent claims discussed above and are therefore believed patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual consideration of the patentability of each on its own merits is respectfully requested.

VIII. CONCLUSION

In view of the above analysis, it is respectfully submitted that the referred to references fail to anticipate or render as obvious the subject matter of any of the present claims. Therefore, reversal of all outstanding grounds of rejection is respectfully solicited.

Respectfully submitted,

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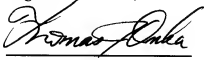

Date: May 23, 2010

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IX. CLAIMS APPENDIX

1. An apparatus for recording a selected program, comprising:

a) a means for selecting the selected program;

b) a means for receiving a data stream, one start data packet, and one end data packet for the entire selected program;

c) a means for detecting the start data packet for the selected program and the end data packet for the selected program; and

d) a means for recording the selected program, the recording being initiated in response to the detection of the start data packet for the selected program and terminated in response to the detection of the end data packet for the selected program,

wherein the data stream includes one or more programs and a private stream, each program being represented by content data packets in the data stream, the private stream including the start data packet and the end data packet for the selected program and a start data packet and an end data packet for each additional program and the start data packet precedes the associated content data packets in the data stream for each program and the end data packet follows the associated content data packets in the data stream for each program and the end data packet of a preceding program and the start data packet for a following program are combined in a common data packet.

2. Cancelled.

3. Cancelled.

4. Cancelled.

5. The apparatus as set forth in claim 1, wherein the data stream includes one or more programs, wherein each program is represented by content data packets in the data stream, the start data packet and the end data packet being in a private stream, which also includes a start data packet and an end data packet associated with individual additional programs or program segments.

6. The apparatus as set forth in claim 5 wherein the associated start data packet in the private stream is provided in advance of the associated content data packets in the data stream for each program and the associated end data packet in the private stream is provided after the associated content data packets in the data stream for each program.

7. The apparatus as set forth in claim 6 wherein each end data packet of a preceding program and the start data packet associated with a succeeding program are combined in a common data packet.

8. The apparatus as set forth in claim 1 wherein the start data packet and the end data packet include information that identifies the selected program.

9. The apparatus as set forth in claim 1 wherein the data stream includes multiple programs, each program being associated with a sub-channel, the start data packet and the end data packet including information that identifies the selected program and the sub-channel associated with the selected program.

10. The apparatus as set forth in claim 1 wherein the data stream is associated with a first channel, the start data packet and the end data packet are associated with a private stream and a second channel, the start data packet and end data packet including information that identifies the selected program and the channel associated with the selected program.

11. The apparatus as set forth in claim 1 wherein the data stream is a digital data stream and includes one or more programs, each program in the data stream being represented by digital content data packets, and the means for recording the selected program including a digital recorder to record the digital content data packets.

12. A method for recording a selected programming with a video recorder comprising:

a) receiving a data stream associated with the selected programming;

b) receiving and detecting one start data packet for the entire selected programming;

c) starting the recording with the video recorder in response to the detection of the start data packet;

d) receiving and recording the selected programming;

e) receiving and detecting one end data packet for the selected programming;

f) stopping the recording of the selected programming in response to the detecting of the end data packet; and

(g) combining one or more programs and a private stream to produce the data stream, each program being represented by content data packets in the data stream, the private stream including a start data packet and an end data packet for each program; and providing the data stream to a consumer environment having the video recorder,

wherein the start data packet precedes the associated content data packets in the data stream for each program and the end data packet follows the associated content data packets in the data stream for each program and each end data packet and the start data packet for a succeeding program are combined in a common data packet.

13. Cancelled.

14. Cancelled.

15. Cancelled.

16. The method as set forth in claim 12 wherein the data stream is a digital data stream and includes one or more programs including the selected programming, each program in the data stream being represented by digital content data packets.

17. The method as set forth in claim 12, further including before step a):

combining one or more programs to produce the data stream, each program being represented by content data packets in the data stream;

combining one start data packet and one end data packet associated with each program to produce a private stream; and

providing the data stream and the private stream to a consumer environment having the video recorder.

18. The method as set forth in claim 17 wherein the associated start data packet in the private stream is provided in advance of the associated content data packets in the data stream for each program and the associated end data packet in the private stream is provided after the associated content data packets in the data stream for each program.

19. The method as set forth in claim 18 wherein each end data packet of a preceding program and the start data packet associated with a succeeding program are combined in a common data packet.

20. The method as set forth in claim 12 wherein the start data packet and the end data packet include information that identifies the selected program.

21. The method as set forth in claim 12 wherein the data stream includes:

multiple programs, each program being associated with a sub-channel;

the start data packet and the end data packet including information that identifies the selected program and the sub-channel associated with the selected program.

22. The method as set forth in claim 12 wherein the data stream is associated with a first channel, the start data packet and the end data packet are associated with a private stream and a second channel, and the start data packet and end data packet include information that identifies the selected program and the channel associated with the selected program.

23. A method for recording selected programming comprising:

a) combining one or more programs to produce a data stream, the one or more programs including the selected programming, each program being represented by content data packets in the data stream;

b) combining one start data packet and one end data packet for each entire program to produce a private stream; and

c) providing the data stream and the private stream to a consumer environment having a video recorder;

wherein the data stream is associated with a first channel, the start data packet and the end data packet are for a private stream and a second channel, and the start data packet and end data packet include information that identifies the selected program and the channel associated with the selected program.

24. The method as set forth in claim 23, further including:

receiving the data stream associated with the selected programming;

receiving and detecting the start data packet associated with the selected programming;

starting the recording with the video recorder in response to the detection of the start data packet;

receiving and recording the selected programming;

receiving and detecting an end data packet associated with the selected programming; and

stopping the recording of the selected programming in response to the detecting of the end data packet.

25. The method as set forth in claim 24 wherein the data stream is a digital data stream, each program in the data stream being represented by digital content data packets.

X. EVIDENCE APPENDIX

No evidence has been submitted.

XII. RELATED PROCEEDINGS APPENDIX

There are no related proceedings.